



STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF EXAMINERS OF MASTER PLUMBERS

|                                 |   |                           |
|---------------------------------|---|---------------------------|
| IN THE MATTER OF THE SUSPENSION | : | Administrative Action     |
| OR REVOCATION OF THE LICENSE OF | : |                           |
|                                 | : |                           |
| FELDMAN MIDDLETON, LMP          | : | FINAL ORDER OF DISCIPLINE |
| License No. 36BI00702600        | : |                           |
|                                 | : |                           |
| TO PRACTICE PLUMBING IN THE     | : |                           |
| STATE OF NEW JERSEY             | : |                           |

This matter was opened to the New Jersey State Board of Examiners of Master Plumbers ("Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Feldman Middleton ("respondent") is a licensed master plumber in the State of New Jersey and has been a licensee at all times relevant hereto.

2. Respondent appeared before the Board on February 26, 2009 to provide testimony, and documentation, concerning several plumbing jobs in which the Board suspected questionable business practices in possible violation of the Board's regulations.

3. Respondent testified regarding a plumbing job at 173 North 17<sup>th</sup> Street in East Orange New Jersey. Respondent admitted he participated in the job, worth in excess of \$5,500.00, without a contract. He admitted having signed and sealed the permits, although neither he nor a W-2 employee employed by respondent,

performed the work at the site. Respondent acknowledged that the unlicensed general contractor did the plumbing work. When asked, respondent failed to provide proper documentation concerning the job, as previously requested by the Board. Finally, respondent admitted that the job was not completed by his company or the general contractor but that he never filed for a change of contractor.

4. Respondent testified regarding a plumbing job at 469 Halsted Street in East Orange New Jersey. Respondent testified that he agreed to install two hot-water boilers and one gas line for a homeowner. Respondent admitted he did not have a written contract with the consumer to perform the work. Respondent also admitted that he often works on jobs without a proper contract. He acknowledged that this was an "unethical" business practice. When asked, respondent was again unable to provide proper documentation concerning this job as had been previously requested by the Board.

5. Respondent testified regarding a plumbing job at 35 Edison Place in Newark, New Jersey. Once again, respondent admitted having signed and sealed the permit although neither he, nor a W-2 employee employed by respondent, performed any of the work. Respondent testified that he "supervised" the work but that the work was actually performed by the unlicensed general contractor. Once again, respondent failed to obtain a written contract with the consumer.

6. Respondent testified regarding a plumbing job at 123 Schley Street in Newark, New Jersey. Respondent testified that he performed this work himself, but failed to obtain a written contract with the owner. When asked, respondent was again unable to provide proper documentation concerning this job as previously requested by the Board.

7. Respondent testified regarding a plumbing job at 14 Kinney Street in Newark, New Jersey. Once again, respondent admitted having signed and sealed the permit although neither he, nor a W-2 employee employed by respondent, performed any of the work. Respondent testified that the work was actually performed by employees of the unlicensed general contractor.

#### CONCLUSIONS OF LAW

1. The above findings of fact provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(h), in that respondent has violated and failed to comply with the provisions of a regulation administered by the Board, specifically N.J.A.C. 13:32-3.4, in that the work to be performed by respondent under his signed and sealed permits was not subcontracted to another licensed contractor, nor was it performed by respondent or the employees of respondent.

2. The above findings of fact provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(e), in that respondent engaged in professional or

occupational misconduct by failing to provide information related to his plumbing jobs, which was previously requested by the Board, in violation of N.J.A.C. 13:45C-1.3.

3. The above findings of fact provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(b), in that he has engaged in the use and employment of dishonesty, fraud, deception and misrepresentation and false pretense in that respondent allowed his plumbing seal to be used to secure a plumbing permit for an unlicensed person in violation of N.J.A.C. 13:32-4.1 (c).

#### DISCUSSION

Based on the foregoing Findings of Fact and Conclusions of Law, a Provisional Order of Discipline (POD) was filed on September 24, 2009. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Respondent, through his attorney, responded to the POD by letter dated April 8, 2011 in which he sought modification of the

penalty or dismissal of the POD. To support his position he questioned the Board's authority to "unilaterally and without notice" inquire about pending open permits (jobs) during his first appearance at an investigatory inquiry on November 20, 2008 in connection with advertising violations. Respondent claims that his due process rights were violated when the Board questioned him about pending jobs because they were unrelated to the subject matter of his appearance and he had no notice that the open permits were a subject of the inquiry.

The Board finds this argument without merit. The Board's letter dated November 24, 2008, sent following the inquiry, confirmed that the Board adjourned its inquiry when respondent acknowledged that he had four open plumbing jobs and/or permits so that he could better familiarize himself with each open permit and to return to the Board on a later date with related information. Additionally, the Board is satisfied that the notice requirement has been met as evident by the exchange during the second appearance on February 26, 2009 in which it was made clear that at the first appearance he was asked to return to the Board and provide information and testimony regarding open permits.

Further, the Uniform Enforcement Act (UEA), N.J.S.A. 45:1-18(b) authorizes the Board to examine under oath any person or practice subject to an act or regulation administered by the Board when it appears a licensee is engaging in an unlawful practice or

when the Board deems it to be in the public interest to inquire whether a violation may exist. Further, N.J.S.A. 45:1-18(e) authorizes the Board to examine any record, book, documents, account or paper prepared or maintained for any licensee in the regular course of practicing such profession. Therefore, the Board finds respondent's claim of depriving him of his due process rights to notice to be without merit.

Similarly, the Board finds respondent's argument is without basis that his due process rights were violated because he did not have the benefit of counsel. The Board letters noticing him of the appearances all clearly advised respondent of his right to counsel. At each inquiry, respondent was advised he has a right to counsel but nonetheless he determined to testify without counsel.

With regard to the work permit performed at 35 Edison Place, 14 Kinney Street and 173 North 17<sup>th</sup> Street pursuant to permits, the Board sustained the finding of facts that respondent violated N.J.A.C. 13:32-3.4 in that despite his admission to having signed and sealed the permits, respondent admits that neither he or his employees performed the plumbing work.

With regard to 469 Halsted Street and 123 Schley Street permits, respondent, who has been in practice for 28 years, was not aware that a "good faith hand shake" agreement for work performed in excess of \$500.00 violates the Board's statutes and regulations. The laws governing the practice of plumbing have been in effect for

years and it is incumbent upon respondent to be familiar with the statutes and regulations governing the practice of plumbing. Further, respondent does not dispute the allegations, thus the Board sustained the findings of fact that respondent performed plumbing services for residential projects, with a purchase price in excess of \$500.00, without a written contract in violation of N.J.A.C. 13:45A-16.2(12).

In considering whether to finalize the POD as filed, the Board took into consideration the surrender of respondent's seal on December 3, 2009 and his effort to facilitate a return of monies to a client on a matter that was not part of this Provisional Order. The Board is not persuaded that respondent's arguments warrant a dismissal of the POD. However, the Board determined to modify the penalty by imposing a reprimand while making the one year suspension retroactive to December 3, 2009, the date respondent surrendered his seal and to ratify the ten thousand dollar (\$10,000) penalty allowing for installment payments.

ACCORDINGLY, IT IS on this 26 day of JANUARY , 2012,

ORDERED that:

1. Respondent is hereby reprimanded for the violations as detailed above.
2. Respondent's license is hereby suspended for a period of one year retroactive to December 3, 2009.
3. Respondent is hereby fined an aggregate civil penalty

totaling ten thousand dollars (\$10,000.00) for the following violations:

a) Respondent is hereby fined a civil penalty of \$1,500.00 for each instance that the respondent allowed his plumbing seal to be used to secure a plumbing permit for an unlicensed entity (i.e. 173 North 17<sup>th</sup> Street, Newark, NJ; 35 Edison Place, Newark, NJ and 14 Kinney Street, Newark, NJ), in violation of N.J.A.C. 13:32-4.1 (c), for an aggregate penalty for this conduct of \$4,500.00.

b). Respondent is hereby fined a civil penalty of \$1,500.00 for each instance of allowing work to be performed under his signed and sealed permits that was not subcontracted to another licensed contractor, nor was it performed by respondent or the employees of respondent (i.e. 173 North 17<sup>th</sup> Street, Newark, NJ; 35 Edison Place, Newark, NJ and 14 Kinney Street, Newark, NJ), in violation of N.J.A.C. 13:32-3.4, for an aggregate penalty for this conduct of \$4,500.00.

c). Respondent is hereby fined a civil penalty of \$1,000.00 for performing plumbing work for residential projects, with a purchase price in excess of \$500.00, without obtaining a written contract, in violation of N.J.A.C. 13:45A-16.2 (12).

4. Payment of the entire civil penalty totaling \$10,000.00 shall be made by certified check or money order payable to the State of New Jersey and forwarded to Executive Director, State Board of Examiners of Master Plumbers, 124 Halsey Street, Sixth



Floor, P.O. Box 45008, Newark, New Jersey 07101. Alternatively, respondent shall make quarterly payments of \$2,500.00 per payment. The first payment shall be due on March 1, 2012. The second payment shall be due on June 1, 2012. The third payment shall be due on September 1, 2012. The final payment shall be due on December 1, 2012. In the event that respondent does not make a timely payment, the full balance will immediately become due. Failure to remit any payment as required by this Order will result in the filing of a certificate of debt, and may result in such other proceedings permissible by law.

NEW JERSEY STATE BOARD OF  
EXAMINERS OF MASTER PLUMBERS

By: Peter I. Voros  
Peter I. Voros  
Board Chairman